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APR 03 2008

In re Application of
Donald Ole Johnson
Application No. 10/646,427
Filed: November 21, 2003
Attorney Docket No. TLR-5231US

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OFFICE OF PETITIONS

ON PETITION

This is a decision in response to the renewed petition, filed December 3, 2007, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **DISMISSED**.

A grantable petition under 37 CFR 1.137(b)¹ must be accompanied by: (1) the required reply,² unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

Again, the petition does not comply with item (3) above. In this regard, petitioner asserts his inexperience in these matters and his financial inability to employ the services of patent counsel to aid in preparing a timely reply to the outstanding Office action of October 15, 2004 resulted in the delay.

The record discloses that petitioner herein was prosecuting his own application. While resources would have been necessary to employ the assistance of counsel in continuing the prosecution of the above-identified application, persons seeking patent rights have no "right" to the assistance of counsel during the application process. Boyden v. Commissioner of Patents, 441 F.2d 1041, 168 USPQ 680 (D.C. Cir. 1971). As patent applications are commonly prosecuted *pro se*, arguments that the financial inability to employ counsel to aid in the prosecution of an application rendered

¹ As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

² In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

the abandonment of the application “unintentional” are unpersuasive. That is, while applicants may obtain the services of counsel to assist in the application process, such counsel is not strictly necessary, and, as such, the lack of knowledge or the financial inability to employ a counsel does not excuse a delay in providing a required response to an Office action.

The evidence is also insufficient to establish financial difficulties as they relate to the delay in filing the initial petition from November 16, 2004 until the filing of the initial petition on March 27, 2007. In fact, there is no showing to support petitioner’s allegation of his financial difficulties.

In view of the above, the petition cannot be granted.

This decision is made without prejudice to reconsideration. However, any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled “Renewed Petition under 37 CFR 1.137(b).”

Petition is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioner should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

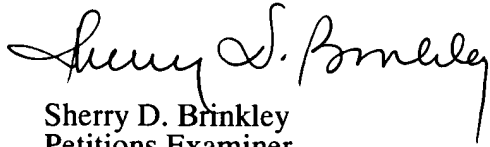
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
 Customer Service Window, Mail Stop PETITION
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300**.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

A handwritten signature in black ink, appearing to read "Sherry D. Brinkley". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions